

REMARKS

In response to a final rejection dated March 10, 2003, applicant filed a Notice of Appeal, Notice of Appeal fee in the amount of \$160.00, an Appeal Brief, and an Appeal Brief fee in the amount of \$160.00. In response to the applicant filing the Notice of Appeal and Appeal Brief, the Examiner withdrew the final rejection and made a non-final new rejection, partially based on new prior art. Applicant submits that both the Notice of Appeal fee and the Appeal Brief fee should be returned to applicant, or they should be applied to an appeal of the latest rejection, if one should be necessary.

Claims 1-10 are now rejected under 35 U.S.C. § 103(a) as being unpatentable over the hypothetical combination of Dorner D449,424 and Lindheim 1,245,475. In the rejection, the Examiner admits that neither reference discloses a hat in the shape of a letter "M." Also, in the rejection, the Examiner is assuming something about the device pictured in Dorner D449,424 that is not disclosed in this patent. The Examiner is assuming that the device is made from a resilient foam plastic material and is assuming that the device is placed on a person's head in a manner similar to the way that applicant "M" is placed on a person's head.

LINDHEIM 1,245,475 IS NON-ANALOGOUS ART

Reference is made to pages 7-11 and the discussion on these pages why Lindheim 1,245,475 is non-analogous art. That argument is hereby incorporated in this Response by this specific reference to it.

CLAIMS 1-10 ARE PATENTABLE

Claims 1-10 stand rejected as being obvious under 35 U.S.C. §103(a) from the information contained in Dorner et al. Des.449,424 and Lindheim 1,245,475. Applicant traverse

this rejection and request that the Examiner withdraw it.

Firstly, Dorner et al. Des. 449,424 is an improper reference. This is because applicant made his invention before the August 23, 2000 filing date of the application from which this patent issued. Applicant reserves the right to supplement this Response by squaring back of this reference.

Secondly, although the title of the patent is “Horseshoe Shaped Novelty Hat”, there is no written description that describes the material from which the hat is constructed. There is no disclosure of its size relative to a person’s head. There is no disclosure as to how the hat is to be worn. It is well established, when a drawing alone is relied upon, all doubt as to the structure shown must be resolved in the favor of the applicant. See, for example, in re application of *Herbert G. Kamrath*, 20 USPQ 61(CCPA 1933).

Claim 1 calls for “a foam body” Dorner et al. Des.449,424 does not disclose a foam body. Claim 1 specifies that the foam body is in “the shape of a letter ‘M’.” Dorner et al. Des.449,424 does not disclose a body, foam or otherwise, in “the shape of a letter ‘M’”. Claim 1 specifies “side portions depending from said inner connecting portion and defining a space between them, below the interconnecting portion, and forming the side portions of the letter ‘M’.” Claim 1 also specifies that the side portions of the foam body include “confronting, temple engaging, inside surfaces, spaced apart a distance less than a temple-to-temple width of a person’s head.” These features are not disclosed by the reference patents.

References are made again to the Appeal Brief, and in particular to the discussion starting on page 11 of the Brief and continuing through page 17. In these pages, claim limitations are discussed which are not shown by the reference patents. Claims 2-10 are specifically disclosed on pages 15-17 of the Appeal Brief. A discussion of these claims is incorporated herein by this specific reference.

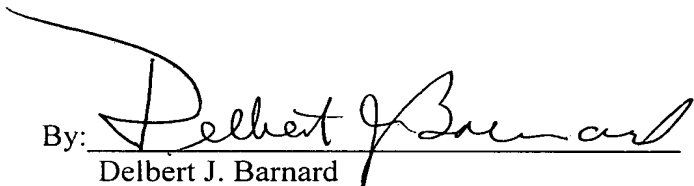
Quite clearly, the Examiner has made a "hind sight" rejection, based not on what the references themselves would teach to a person skilled in the art, but rather on applicant's disclosure.

It is submitted that claims 1-10 are all patentable over the prior art. Accordingly, early reconsideration and allowance of the claims and the application are requested.

Respectfully submitted,

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By:

A handwritten signature in cursive script, reading "Delbert J. Barnard", written over a horizontal line.

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DJB/cmt